

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT**

**IN RE:**

**BENNIE R. EZELL, Sr. &  
DEBRA A. EZELL**

**CASE NO. 14-43098  
CHAPTER 13**

**Debtor(s),  
TUCKER**

**HON. THOMAS J.**

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**BENNIE R. EZELL &  
DEBRA A. EZELL**

**ADV. PROC. CASE NO.**

**Plaintiff(s),**

**v.**

**US BANK NATIONAL ASSOCIATION, AS TRUSTEE,  
FOR RICE PARK FINANCING WHOLE LOAN GRANTOR  
TRUST 2010-1**

**Defendant(s).**

**COMPLAINT TO AVOID UNSECURED MORTGAGE ON DEBTORS' RESIDENCE**

Plaintiffs Bennie R. Ezell and Debra A. Ezell, by and through their Counsel, Babut Law Offices, PLLC, states the following in support of their Complaint to Avoid Unsecured Mortgage on Debtors' Residence:

**JURISDICTION and VENUE**

1. This Adversary Proceeding is brought pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 7002(2) and seeks relief pursuant to 11 U.S.C. § 506.
2. Jurisdiction is proper pursuant to 28 U.S.C. § 157 and § 1334(a) and under

FRBP 7001 and 7004.

3. This is a Core Proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (K), and (O).

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

### **GENERAL ALLEGATIONS**

5. That Plaintiffs filed a Chapter 13 Bankruptcy Petition with this Court on or about February 28, 2014.

6. That Plaintiffs own their Residence located at 12911 Visger, Detroit, Michigan 49217 jointly subject to two Mortgages.

7. That Bank of America holds the First Mortgage upon which a Principal Balance of sixty four thousand five hundred and ninety two dollars (\$64,592) or more is owed.

8. That Defendant US Bank National Association (as Trustee for Rice Park Financing Whole Loan Guarantor Trust 2010-1) holds a Second Mortgage upon which a Principal Balance of twenty four thousand seven hundred and forty seven dollars and thirty two cents (\$24, 747.32) or more is owed.

9. That the value of the Residence is \$45,000.00 or less.

10. That the value of the Residence, combined with the Principle Balance owed on the First Mortgage, renders the Second Mortgage wholly Unsecured.

11. That Plaintiffs are therefore entitled to avoid the Second Mortgage under 11 U.S.C. § 506 and treat the Claim as that of a Class 8 General Unsecured Creditor.

**WHEREFORE** Plaintiffs respectfully request this Honorable Court:

A. Order that the Value of Debtors' Residence is insufficient to support Defendant's claim as a secured claim;

B. Order that upon the successful completion of Plaintiffs' Chapter 13 Plan and the entry of an Order of Discharge that Defendant's Mortgage shall be deemed Discharged.

C. Order that upon the successful completion of Plaintiffs' Chapter 13 Plan and the entry of an Order of Discharge, this Judgment shall act as a Discharge of the Defendant's Mortgage and may be recorded by the Wayne County Register of Deeds.

D. Order that Defendant's claim upon the second mortgage in the underlying Bankruptcy Proceeding shall be an allowed unsecured claim.

Dated: May 7, 2014

Respectfully Submitted,

BABUT LAW OFFICES, PLLC

/s/Nathaniel H. Herdt  
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